

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

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ALONZO AUSTIN, EXECUTOR
Plaintiff

v.

MODERN WOODMAN OF
AMERICA; et al

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(
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Case No.:3:07-cv-00138-MHT-WC

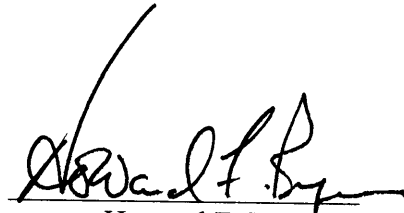
JOHN P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

MOTION TO QUASH SERVICE

The undersigned, Howard F. Bryan, is a named party defendant in the above-styled case. This pleading is filed specially for the purpose of questioning purported service of process. This pleading should not be taken as an acceptance of service, an acknowledgment of jurisdiction, or an appearance on the merits.

Plaintiff attempted to obtain service by certified mail. That mail was sent to the Circuit Clerk of Macon County, Alabama in Tuskegee, Alabama. One of the deputy clerks signed the return receipt. Defendant did not learn of the existence of this action until some time in April and as yet has not seen a copy of the complaint. At the time the deputy clerk signed the return receipt defendant was no longer an active Circuit Judge. Defendant has never designated the Circuit Clerk or any of his deputies as agents for service of process. However, even if the deputy clerk could have been considered defendant's agent for service of process while defendant was an active Circuit Judge that agency, if any, expired when defendant retired from the bench. As a result there has not been service and therefore any purported service should be quashed and held for naught.

Respectfully submitted



Howard F. Bryan

CERTIFICATE OF SERVICE

I hereby certify that I have filed the forgoing Motion To Quash Service by depositing a copy hereof in the United States mail, postage prepaid and properly addressed to the following:

Alonzo Austin
1321 Oliver-Carlis Rd.
Tuskegee, Alabama 36083

Charles D. Stewart
Spain & Gillon, L.L.C.
2117 Second Avenue, North
The Zinszer Building
Birmingham, Alabama 35203
Attorney for Modern Woodman of America

Jack B. Hinton, Jr.
Gidiere, Hinton, Herndon & Christman
904 Regions Tower
60 Commerce Street
Montgomery, Alabama 36104
Attorney for Mason Manor

Joe Espy, III
Melton, Espy & Williams, P.C.
Post Office Drawer 5130
Montgomery, Alabama 36103
Attorney for Fred Gray, Sr. And Attorney Alan Nathanson

Kimberly Owen Fehl
City of Montgomery Legal Division
Post Office Box 1111
Montgomery, Alabama 36101-0111

Bettie J. Carmach
Alabama Attorney General's Office
11 South Union Street
Montgomery, Alabama
Attorney for Alabama Board of Licensure

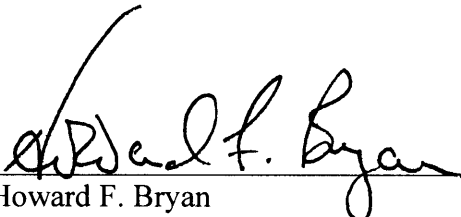
Stanley F. Gray
Gray, Langford, Sapp, McGowan, Gray & Nathanson
Post Office Box 830239
Tuskegee, Alabama 36083
Attorney for Alabama Exchange Bank President and Robert Davis

John R. Bushby, Jon H. Patterson & Victor L. Hayslip
Burr & Forman LLP
420 North 20th Street, Suite 3100
Birmingham, Alabama 35203
Attorneys for SouthTrust Bank, SouthTrust Bank President and Regions Bank

Pamela B. Slate
Slate Kennedy LLC
Post Office Box 388
Montgomery, Alabama 36101
Attorney for Aetna Insurance Co.

John Michael Manasco
State of Alabama Treasury
Post Office Box 302510
State Capitol Building
600 Dexter Avenue Room S-106
Montgomery, Alabama 36130
Attorney for Alabama Treasurer's Department

on this the 22 day of May, 2007.


Howard F. Bryan

AFFIDAVIT OF HOWARD F. BRYAN

Personally appeared before me, the undersigned authority, Howard F. Bryan, who having been duly sworn duly deposes and says:

1. I am Howard F. Bryan. Prior to my retirement on January 16, 2007, I served as Circuit Judge for the Fifth Judicial Circuit of Alabama. The Fifth Judicial Circuit is composed of Chambers, Macon, Randolph, and Tallapoosa Counties.

2. I took office as Circuit Judge on April 15, 1980. During the intervening years I had non-jury jurisdiction in Macon County. My last service as non-jury judge commenced in the late 1980s and continued until my retirement in January 2007.

3. I have never authorized the Circuit Clerk of any of the counties in the Fifth Judicial Circuit or any of their deputies to act as my agent for service of process.

4. I learned of this action in April of 2007 when I was contacted by the Circuit Clerk's Office in Macon County concerning mail that had been sent to me at the courthouse in Tuskegee concerning this case. I went to the Circuit Clerk's Office and collected all of the mail. The mail contained copies of various motions. However, none of the mail included a copy of complaint.

5. As of the date of the filing of the pleading to which this affidavit is attached and made a part thereof by reference I have still not seen a copy of the complaint. As a result I cannot respond to any of the allegations contained therein. However, I have no recollection of plaintiff or any action that he may have had pending in Macon County.

6. Investigation on my part has revealed that the court record shows that service was perfected by certified mail in February. It appears that Sheila Heard signed the return receipt card.

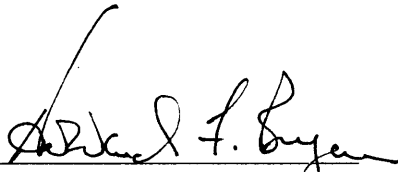
7. I have never conducted any business in Macon County other than in my capacity as Circuit Judge.

8. My home address is:

402 19th Avenue Southwest
Lanett, Alabama 36863

9. The facts stated herein are true and correct to the best of my knowledge, information and belief.

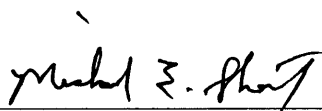
Done this the 18 day of May, 2007.


Howard F. Bryan

State of Alabama ()
Lee County ()

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Howard F. Bryan, whose name is signed to the foregoing affidavit, and who is known to me, acknowledged before me on this date, that, being informed of the contents of this instrument, he executed the same voluntarily on this date.

Given under my hand and official seal this the 18th day of May, 2007.


Notary Public

My Commission Expires: _____

MY COMMISSION EXPIRES JUNE 28, 2010.

